

COMMONWEALTH OF VIRGINIA

VIRGINIA MARINE RESOURCES COMMISSION (VMRC)

GENERAL PERMIT VGP #2

VMRC GENERAL PERMIT FOR GROIN PROJECTS DESIGNED TO CONTROL SHORELINE EROSION, WHICH CONFORM TO CERTAIN CRITERIA AND ARE UNDERTAKEN BY RIPARIAN OWNERS IN, ON OR OVER STATE-OWNED SUBAQUEOUS LANDS IN WATERS OF THE COMMONWEALTH.

1. AUTHORITY - EFFECTIVE DATE

(a) This General Permit is promulgated pursuant to the authority contained in § 28.2-103 and Chapter 12 of Title 28.2 of the Code of Virginia.

(b) This General Permit conforms with current Commission policy in its establishment of general permits for projects which meet certain restrictive criteria.

(c) This General Permit is consistent with the official opinion of the Attorney General issued on October 31, 1984, and attached hereto.

(d) The effective date of this General Permit is July 1, 1985.

2. DISCUSSION

(a) A principal objective of the permit streamlining efforts of this agency is the achievement of a single permit wherever possible for minor projects with minimal cumulative impacts.

(b) The Norfolk District U.S. Army Corps of Engineers has approved a general permit for groin projects in Virginia waters which are authorized by a local wetlands board and/or VMRC (89 RP-19)

(c) Local wetlands boards now process applications and issue permits for groins under the 1982 amendments to the Wetlands Act which placed the non-vegetated intertidal area of the "Tidewater Virginia" shoreline under their jurisdiction.

(d) The Virginia Institute of Marine Science reviews all applications for groins in tidal waters and submits a written evaluation to local boards for their use in the decision process.

(e) All local wetlands boards' decisions are made at public hearings which are public noticed in accordance with § 28.2-1302 of the Code of Virginia.

(f) The Commissioner reviews all decisions of local wetlands boards in compliance with § 28.2-1310.

(g) Any applicant, or 25 or more freeholders of property within the locality, aggrieved by a final decision of the local board, whether such decision is affirmative or negative in form, may appeal that decision to the Commission which will then review the local record in accordance with §§ 28.2-1311, 1312, and 1313.

(h) The Commission has promulgated guidelines to assist local boards in determining the appropriateness and suitability of proposed groin structures.

3. PROCEDURES

The Chief, Habitat Management Division, will administer the General Permit and assure:

(a) That the approved Local-State-Federal Joint Permit Application form is completed and filed in accordance with the instructions contained therein.

(b) That applications are processed in accordance with the procedures established in § 28.2-1302 of the Wetlands Act and the local ordinance adopted thereunder.

(c) That groin projects authorized by this permit achieve the policy and standards implicit in Chapter 12 of Title 28.2 of the Code of Virginia, reasonably accommodate guidelines promulgated by the Commission and are consistent with the attached opinion of the Attorney General.

(d) That groins authorized by local boards meet the following criteria: (1) are of "low profile" design, (2) do not extend more than 48 feet channelward of mean high water, (3) if constructed of riprap or stone material do not exceed six feet in base width, and (4) any spur associated with an approved groin must be properly designed and located.

Projects which do not meet the criteria in (a) through (d) above will be processed for an individual VMRC permit with appropriate fees and royalties.

4. AUTHORIZATION/CONDITIONS

All proposals for groin structures to encroach in, on or over State-owned subaqueous land which meet the criteria in

paragraph 3 (a) through (d) above are hereby permitted subject to the following standard conditions:

- (1) This permit grants no authority to the Permittee to encroach upon property rights, including riparian rights, of others.
- (2) The duly authorized agents of the Commission shall have the right to enter upon the premises at reasonable times, for the purposes of inspecting the work being done pursuant to this permit.
- (3) The Permittee shall comply with the water quality standards as established by the State Water Control Board and all other applicable laws, ordinances, rules and regulations affecting the conduct of the project. The granting of this permit shall not relieve the Permittee of the responsibility of obtaining any and all other permits or authority for the project.
- (4) The permit shall not affect or interfere with the right vouchsafed to the people of Virginia concerning fowling and the catching of and taking of oysters and other shellfish in and from the bottom of areas and waters not included within the terms of this permit.
- (5) The Permittee shall, to the greatest extent practicable, minimize the adverse effects of the project upon adjacent properties and wetlands and upon the natural resources of the Commonwealth.
- (6) This permit may be revoked at any time by the Commission upon the failure of the Permittee to comply with any of the terms and conditions hereof or at the will of the General Assembly of Virginia.
- (7) There is expressly excluded from this permit any portion of the waters within the boundaries of the Baylor Survey (Public Oyster Ground).
- (8) This permit is subject to any lease of oyster planting ground in effect on the date of this permit. Nothing in this permit shall be construed as allowing the Permittee to encroach on any lease without the consent of the leaseholder. The Permittee shall be liable for any damages to such lease.
- (9) The issuance of this permit does not confer upon the Permittee any interest or title to the beds of the waters.

- (10) All structures authorized by this permit which are not maintained in good repair shall be completely removed from State-owned bottom within three (3) months after notification by the Commission.
- (11) The Permittee agrees to indemnify and save harmless the Commonwealth of Virginia from any liability arising from the establishment operation or maintenance of said project.
- (12) This permit authorizes no claim to archaeological artifacts which may be encountered during the course of construction. If, however, archaeological remains are encountered, the Permittee agrees to notify the Commission, who will, in turn, notify the Virginia Department of Historic Resources. The Permittee further agrees to cooperate with agencies of the Commonwealth in the recovery of archaeological remains if deemed necessary.

5. This General Permit should be retained by the Permittee for the life of his project as evidence of authorization.

This is to certify that this permit was approved by the Commission at its regularly scheduled meeting on May 28, 1985, and is recorded in the official minutes of that meeting.

COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSION

By: William A. Pruitt
William A. Pruitt
Commissioner

Subscribed and sworn to before me this 23rd day of February, 1993.

My Commission expires: June 30, 1993

Virginia S. Chappell
Notary Public



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COMMONWEALTH of VIRGINIA

Office of the Attorney General

Gerald L. Baliles
Attorney General

William G. Broadus
Chief Deputy Attorney General

October 31, 1984

Donald C. J. Gehring
Deputy Attorney General
Criminal Law Enforcement Division

Maston T. Jacks
Deputy Attorney General
Human & Natural Resources Division

Elizabeth B. Lacy
Deputy Attorney General
Judicial Affairs Division

Walter A. McFarlane
Deputy Attorney General
Finance & Transportation Division

Karl E. Bren
Director of Administration

The Honorable William A. Pruitt, Commissioner
Marine Resources Commission
P. O. Box 756
Newport News, Virginia 23607

My dear Mr. Pruitt:

You have requested my opinion regarding the authority of a local wetlands board to regulate the length of structures known as groins (structures built out from a shore to prevent erosion) and other similar structures constructed as part of a single project extending beyond the wetlands in both the intertidal zone and below mean low water.

The Wetlands Act, § 62.1-13.1 et seq. of the Code of Virginia, provides for local wetlands boards and gives them authority to regulate wetlands which are contiguous to and above mean low water, including the intertidal zone.

The lands below mean low water, unless previously conveyed away, are owned by the Commonwealth. See § 62.1-1. Section 62.1-3 allows certain uses of these lands and gives the Marine Resources Commission (the "Commission") authority to permit other uses. See 1981-1982 Report of the Attorney General at 242.

The Wetlands Act prohibits any use or development of wetlands without a wetlands permit issued by a wetlands board. See §§ 62.1-13.9 and 62.1-13.5(4)(a). A wetlands board must base its decision to issue or deny a permit on the impact the use or development will have on the public health and welfare as expressed by the Act's policy of preserving wetlands. Sections 62.1-13.5(9) and 62.1-13.1. The Commission is empowered by § 62.1-13.13 to modify, remand or reverse the decision of the wetlands board. See 1982-1983 Report of the Attorney General at 761.

In granting or denying any permit for the use of state-owned bottom lands, the Commission must consider the effect of the project "upon the wetlands of the Commonwealth, except when its effect upon said wetlands has been or will be determined under the provisions of Chapter 2.1 (§ 62.1-13.1 et seq.) [The Wetlands Act]...." Section 62.1-3, ¶ 6.


The Honorable William A. Pruitt
October 31, 1984
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By reading the wetlands boards' authority to carry out the Commonwealth's strong policy favoring wetlands preservation, together with the deference to Wetlands Act decisions contained in § 62.1-3, I conclude that a local wetlands board should consider the impact on wetlands from the total project, including that portion of the project resting on subaqueous lands beyond the wetland. Although not expressly authorized to do so by statute, regulation of the length of a structure is vital to exercising the authority to regulate the use of wetlands. Whether such consideration will require imposition of a limitation on the length of structures located below mean low water is a factual determination which must be made on a case-by-case basis. That decision is subject to review by the Commission. If the wetlands board does not consider the wetlands impact of the total project, the Commission must consider, pursuant to § 62.1-3, the effect of such a subaqueous project on wetlands, when it determines whether or not to grant a permit to use subaqueous lands.

I am, therefore, of the opinion that a local wetlands board is authorized to regulate the length of a structure which is constructed through both the intertidal zone and channelward of mean low water, subject to superior jurisdiction of the Commission to modify or reverse the decision.

With kindest regards, I am

Sincerely,


Gerald L. Baliles
Attorney General

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